A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Before: Hon'ble Shri Justice Dilip Raosaheb Deshmukh

First Appeal (M) No. 10 of 2007

Shekhar Chouhan

Vs.

Geeta Devi

Post for Order: 17/8/

Sd/-
Dilip Raosaheb Deshmukh
Judge

A.F.R.

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HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (M) No. 10 of 2007

Before: Hon'ble Shri Justice Dilip Raosaheb Deshmukh

APPELLANT DEFENDANT : Shekhar Chouhan, S/o Late Shri Subhalia, aged about 45 years, Caste-Domar, Occupation – Service in S.E.C.L. R/o Club Dafai, Korea Colliery, Tehsil-Baikunthpur, District Korea, Chhattisgarh.

Versus

RESPONDENT/ PLAINTIFF : Geeta Devi, W/o Shri Shekhar Chouhan, aged about 41 years, Caste-Domar, R/o Dafai No.3, North Jhagrakhand Colliery, P.S. & Tehsil – Manendragarh, Distt. Kore, Chhattisgarh.

Appeal under section 28 of the Hindu Marriage Act, 1955

Present:

Shri Pankaj Shrivastava, counsel for the appellant.
No one appears for the respondent.

ORDER

(Passed on this 17th day of August 2007)

This appeal is directed against an order dated 30.12.2006 passed by the 2nd Additional District Judge, Manendragarh, Distt. Korea in Civil Suit No.17-A of 2006 whereby permanent alimony of Rs.2000/- was granted to the respondent/plaintiff under Section 25 of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act, 1955)

2. Admittedly, the appellant was married to the respondent in the year 1977 and had four children from the marital wedlock. It is also not in

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dispute that the appellant married Sita Devi during the subsistence of the marriage with the respondent and has two children from her. Civil Suit No.2-A of 89 instituted by the appellant for restitution of conjugal rights was dismissed by the Additional District Judge, Manendragarh vide judgment dated 25.09.1990. The appellant has the custody of the children. The respondent lives at her maternal home. The gross salary of the appellant was Rs.9985.97 in the month of November, 2006.

3. The respondent/plaintiff had, in her application under Section 25 of the Act, 1955 stated that she was living in her maternal home at Jhagrakhand and was unable to maintain herself. The appellant did not even pay to her the meager maintenance of Rs.150/- per month granted in proceedings under Section 125 of Cr.P.C. A permanent alimony of Rs.6,000/- per month was claimed.

4. The appellant denied the claim and pleaded that the respondent had sufficient income from knitting and tailoring as also from poultry. Since he had a large family to support, the application under Section 25 of the Act was liable to be dismissed.

5. The learned 2nd Additional District Judge, Manendragarh, on appreciation of evidence, granted permanent alimony of Rs.2,000/- per month from the date of application till lifetime of the respondent herein.

6. Shri Pankaj Shrivastava, learned counsel for the appellant has impugned the order dated 30.12.2006 on the sole ground that the permanent alimony awarded by the 2nd Additional District Judge,

Manendragarh being excessive should be reduced to atleast Rs.1250/- per month. No other ground was urged.

7. No one appeared for the respondent at the time of final hearing.

8. Having considered the submissions of learned counsel for the appellant, the only point which requires consideration is whether the permanent alimony awarded by the 2nd Additional District Judge is liable to be reduced.

9. Section 25 of the Act, 1955 reads as under:

> "**25. Permanent alimony and maintenance.**--- (1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immoveable property of the respondent.
>
> (2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.
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> (3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or

if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just."

A perusal of the above provision makes it clear that any court exercising jurisdiction under the Hindu Marriage Act, before granting permanent alimony under Section 25 of the Act, 1955 is required to consider the following:

a) that the order granting permanent alimony is made at the time of passing any decree under the Act, 1955 or at any time subsequent thereto,

b) the income and other property of the applicant,

c) the respondent's own income and other property,

d) the conduct of the parties and

e) other circumstances of the case.

10. In the present case, admittedly, Civil Suit No. 2-A of 89 instituted by the appellant for restitution of conjugal rights was dismissed by the Additional District Judge, Manendragarh vide judgment dated 25.09.1990. It is seen that the appellant has, despite the fact that he had four children from the first marriage with the respondent, shamelessly married another lady namely Sita Devi during the subsistence of the first marriage and has two children from her. It also appears that since the respondent/plaintiff was unable to maintain herself, she did not oppose the custody of her children being given to the applicant. It is also pertinent to note the conduct of the appellant. On being asked about the maintenance of his

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children from the marital wedlock with the respondent/plaintiff deposed that "सुंवर कुत्ते के बच्चें पाले जाते है तो यह भी पल जायेंगे". It is also not in dispute that despite the fact that the respondent/plaintiff is living at her maternal home since more than 15 years, the appellant has not even paid the niggardly amount of maintenance awarded to the respondent/plaintiff in proceedings under Section 125 of Cr.P.C.

11. The appellant did admit in his testimony that his monthly gross salary in the month of November, 2006 was Rs.9985.97. His net monthly salary is proved to be Rs.7009/- from the pay slip Ex.D.2. As regards the appellant's pleadings that the respondent/plaintiff was able to maintain herself from the income derived from tailoring, knitting and also from the poultry business, there is no evidence to substantiate the same. Not only this, the appellant did not depose about the amount earned by the respondent from the alleged poultry business. Dhruv Pal N.A.W.2, witness for the appellant, also admitted in paragraph 19 that he had not seen poultry farm in village Jhagrakhand. Gita Devi A.W.1, mother of the respondent/plaintiff also deposed that the work of poultry was closed because the chickens died. She has specifically denied that the respondent was having any income from poultry farm.

12. Considering the facts and circumstances which compelled the respondent/plaintiff to live separately from her husband, the conduct of the appellant and the undisputed net salary of the appellant as also the fact that the respondent was unable to maintain herself and did not have any income from the occupations alleged by the appellant, I am of the

considered opinion that monthly permanent alimony of Rs.2,000/- awarded by the 2nd Additional District Judge, Manendragarh, to the respondent/plaintiff being the bare minimum for survival, no interference is called for.

13. In the result, the appeal fails and is dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani